

### REMARKS/ARGUMENTS

#### The Rejection of Claims 1 – 6, 13, 14 and 20 Under 35 U.S.C. 112, First Paragraph

Applicant respectfully submits that the amendments to Claims 1 and 2 remove any basis for the rejection. The Office acknowledges enablement of ethylenic polymer foams. Applicant therefore respectfully contends that amended Claims 1, 2, 3 - 5, 13 and 14 meet the requirements of 35 U.S.C. 112, first paragraph and ask the Office to withdraw the rejection. Cancellation of Claims 6 and 20 removes them from further consideration.

#### The Rejection of Claims 1 and 5 – 12 Under 35 U.S.C. 102(e) as Anticipated by Tusim

Applicant respectfully submits that the amendments to Claims 1, 7, 9 and 12 and cancellation of Claim 6, 8 and 11 effectively remove Tusim as a basis for rejecting Claims 1 and 5 – 12 under 35 U.S.C. 102(e). Tusim requires at least one polypropylene resin in preparing thermoplastic polymer foam sheets. See e.g. Abstract, column 1, lines 43 and 60, column 3, lines 26 – 64, Examples 1 – 8 and Claim 1. Although non-propylenic polymers may be used in conjunction with a propylenic polymer in accord with column 4, lines 27 – 37 and Examples 6 – 8 (75 weight percent polypropylene/25 weight percent ethylenic polymer), nothing in Tusim expressly teaches or implies a foam made without a propylenic polymer as a major component of a foamable polymer composition. In addition, nothing in Tusim teaches or discloses ethylenic polymer foams. As such, Tusim cannot anticipate remaining Claims 1, 5, 7, 9, 10 and 12.

Tusim also fails to support a rejection under 35 U.S.C. 103(a). Tusim neither teaches nor suggests preparation of an ethylenic polymer. A skilled artisan, guided by Tusim's focus on propylenic polymers as the major, if not sole foamable polymer, finds nothing, not even a starting point, that one should consider trying, much less prepare, an ethylenic polymer foam.

The Rejection of Claims 1 and 6 – 8 under 35 U.S.C. 102(b) as Being Anticipated by Kanebuchi

Kanebuchi does not anticipate Claims 1 and 7 as amended herein. Cancellation of Claims 6 and 8 removes them from further consideration.

Kanebuchi, according to the Abstract provided by the Office relates only to cellular materials or foams prepared from a polypropylene-type resin, optionally in admixture with up to 20 weight percent of an aromatic vinyl resin. The limited disclosure does not teach, either expressly or inherently, an ethylenic polymer foam in general or a non-crosslinked ethylenic polymer foam having an average cell diameter of more than 4 mm in particular.

Based upon Kanebuchi's failure to teach, or even suggest, ethylenic polymer foams, Kanebuchi fails to support an anticipation rejection under 35 U.S.C. 102(b). For the same reason, Kanebuchi does not support an obviousness rejection under 35 U.S.C. 103(a).

The Rejection of Claims 1 – 8 and 20 Under 35 U.S.C. 103(a) over Yoshizawa

Yoshizawa includes a cross-linking agent and a foaming agent in a foamable and cross-linked polyolefin resin composition. See column 4, lines 13 – 19. As noted by the Office, Yoshizawa discloses only crosslinked polyethylene-bases foam with 100 percent, or close to 100 percent, of the cells being opened by mechanical means. See column 5, lines 67-68.

In the absence of a teaching or suggestion to prepare uncrosslinked ethylenic polymer foams, Yoshizawa does not support an obviousness rejection under 35 U.S.C. 103(a). The foaming agent and the cross-linking agent concurrently decompose upon heating to produce a cross-linked foam according to column 4, lines 40 – 44. A skilled artisan

who follows the teachings of Yoshizawa cannot produce any foam but a cross-linked foam. Yoshizawa does not provide any teaching or suggestion that would guide a skilled artisan to consider, much less produce, a non-crosslinked foam. In the absence of such a teaching or suggestion, there can be no support for an obviousness rejection.

The Rejection of Claims 17 and 18 Under 35 U.S.C. 103(a) as Being Unpatentable  
Over Tusim in Combination With Encyclopedia

Cancellation of Claim 18 leaves only 17 to face this rejection. As noted above, Tusim fails to anticipate or render obvious the invention of independent Claim 1 or dependent Claim 7. Claim 17 necessarily incorporates all of the limitations of Claims 1 and 7 from which it depends, directly in the case of Claim 7 and indirectly in the case of Claim 1. If Tusim cannot render either Claim 1 or Claim 7 obvious, it cannot render obvious Claim 17 which simply adds an additional limitation.

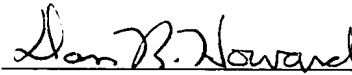
Allowable Claims 15 and 16

Applicant thanks the Office for declaring Claims 15 and 16 allowable over prior art of record. As noted above, Applicant rewrites Claim 16 as an independent claim incorporating all of the limits of Claims 1 and 8 from which it depends. Applicant respectfully asks the Office to favorably consider rewritten Claim 16. In view of the amendments resented above, Applicant also asks the Office to favorably consider Claims 13 and 14 using the same rationale as stated for Claims 15 and 16. Applicant elects not to rewrite Claim 15 based upon a belief that the claims from which it depends are allowable.

Applicant respectfully requests allowance of Claims 1 – 5, 9, 10, 12 – 17 and 19 at an early date. Converting Claim 16 from dependent to independent brings the total number of independent claims to three and does not generate any additional fees. The filing of this paper before expiration of the shortened statutory period and without any accompanying petitions also generates no added fees. If, however, Applicant's attorney errs in believing that no additional fees are due, please charge the appropriate

fee to Deposit Account Number 04-1512 and advise Applicant's attorney of the amount charged and the basis for such a charge.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Dan R. Howard", is written over a horizontal line.

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